IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1396 of 2001 (M/B)
(Old No. 21717/99)

Raj Pal Sharma S/o Sri Moti Lal Sharma,
R/o 122 K.V. Hydel Colony,
Kathodam, Nainital. ……. Petitioner

Versus

1. State Public Service Tribunal,
   Lucknow.
2. U.P. State Electricity Board,
   Lucknow.
   Through its Chairman.
3. The Chief Engineer,
   Tube Well Electrification (World Bank),
   Lucknow.
4. Executive Engineer,
   Tube Well Electrification Division,
   (World Bank), U.P. State Electricity Board,
   Bareilly.
5. Executive Engineer,
   Electricity Transmission Division,
   U.P. State Electricity Board, Haldwani,
   Nainital. …… Respondents

Mr. Gopal Narian, Advocate with Mr. L.K. Verma, Advocate for the petitioner.
Mr. B.D.Upadhyaya, Advocate for respondent No. 5.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Gopal Narain, Advocate with Mr. L.K. Verma, Advocate for the petitioner.

None for respondents Nos. 1 to 4.

Mr. B.D. Upadhyaya, Advocate for respondent No. 5.

They are heard.

2. The petitioner has filed this writ petition for the following reliefs:

> "(i) issue a writ, order or direction in the nature of certiorari to respondent no. 1 to bring up the records of the case and get the judgment of the Tribunal (Respondent No. 1 dated 4.6.1998 quashed) Annexure 9.

(ii) to issue a writ, direction or order in the nature of mandamus commanding the respondents not to recover the money from the petitioner as penal rent and refund the money which has been already recovered.

(iii) to issue a suitable writ, direction or order declaring that G.O. dated 17.7.1991 is invalid and unconstitutional.

(iv) to issue any other writ, direction or order or grant such other and further reliefs as may be deemed fit and proper in the circumstances of the case.

(v) to order costs in favour of the petitioner."

3. The matter relates to the charging of penal rent by fifth respondent Executive Engineer, Electricity Transmission Division for the accommodation unauthorisedly occupied by the petitioner during the period between 01.01.1993 to 12.07.1998.

4. Petitioner Raj Pal Sharma was appointed as Coolie in Transmission Division on 01.03.1972 and was promoted as Lineman on 27.05.1974. He was allotted Quarter No. 8/II situated at Kathgodam vide order dated 11.08.1978 (Annexure No. 1) in his capacity as Lineman in Transmission Division. The petitioner was transferred from Haldwani to Shajahanpur on 04.08.1983; from Shajahanpur to Badaun on 12.01.1989; and from Badaun to Bareilly on 25.09.1990. The petitioner was brought back to Haldwani on 26.10.1990 as Lineman in Tube Well Electrification Division. During all these years, the petitioner continued to occupy Quarter No. 8/II in spite of his above transfers.

5. Some employees of Transmission Division posted at Haldwani made a complaint to fifth respondent in regard to the unauthorized occupation of Quarter No. 8/II by the petitioner and non-allotment of accommodation to them. On the above complaint, the fifth respondent conducted an inquiry and found that the petitioner was occupying accommodation No. 8/II situated at Kathgodam in spite of his transfer to Shajahanpur, Badaun, thereafter to Bareilly and then back to Haldwani in Tube Well Electrification Division. The fifth respondent, therefore, directed recovery as penal rent from the petitioner for the period from 01.01.1993 to 12.07.1998. It is also relevant here to mention that the said accommodation was re-allotted

to the petitioner in his capacity as Lineman in Tube Well Electrification Division vide order dated 13.07.1998.

6. The amount sought to be recovered from the petitioner as penal rent was deducted from his salary on the basis of his letter addressed to the fifth respondent conveying his “no objection” to the deduction of the penal rent from his salary.

7. The petitioner, being aggrieved of the imposition of the penal rent by the fifth respondent, filed a claim petition before the U.P. Public Services Tribunal, Lucknow. The Tribunal, vide its impugned judgment dated 04.06.1998, dismissed the petitioner’s claim petition affirming the imposition and recovery of the penal rent from the petitioner.

8. Mr. Gopal Narain, the learned counsel for the petitioner vehemently argued that as petitioner was entitled to a rent free accommodation according to his service conditions, the Tribunal has erred in dismissing the petitioner’s claim petition. It was further submitted that the petitioner was not given an opportunity of hearing by the fifth respondent before directing recovery of the penal rent.

9. Mr. B.D. Ypadhyaya, the learned counsel for respondent No. 5, on the other hand, supported the impugned judgment and submitted that as the accommodation in question i.e. Quarter No. 8/II situated at Kathgodam was never re-allotted to the petitioner after his transfer from Haldwani in the year 1983 till it was re-allotted to him vide order dated 13.07.1998, the petitioner was liable to pay penal rent as he was occupying the said accommodation unauthorisedly.

10. That the petitioner was allotted Quarter No. 8/II situated at Kathgodam in the year 1978 in his capacity as Lineman in Transmission Division, is not in dispute. It is also not in dispute that the petitioner stood transferred to Shajahanpur in the year 1983 and in spite of his transfer, he continued to occupy the said accommodation. Though he was transferred back to Haldwani on 26.10.1990, it was in

a different capacity as Lineman in Tube Well Electrification Division. True the said accommodation was re-allotted to the petitioner vide order dated 13.07.1998.

11. As, admittedly, the said accommodation was never re-allotted to the petitioner before 13.07.1998, we have no manner of doubt that the petitioner occupied the said accommodation unauthorisedly till the date of re-allotment. In this view of the matter, no fault can be found with the impugned judgment of the Tribunal.

12. The matter has yet another angle. The petitioner continued in the employment of second respondent U.P. State Electricity Board of which Transmission Division and Tube Well Electrification Division were two divisions only. It is nobody's case that the petitioner was not entitled to an accommodation even during his posting at Haldwani as Lineman in Tube Well Electrification Division. In our opinion, the matter deserves to be re-examined from this angle. We, therefore, direct that on the petitioner's making a representation to Chairman, Uttaranchal Power Transmission Corporation, the same shall be considered sympathetically with a view to find out as to whether the imposition of penal rent can be waived and the petitioner can be charged only normal rent for the period from 01.01.1993 to 12.07.1998.

13. With the above observation, the writ petition stands disposed of.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**
10.05.2006 **10.05.2006**

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